

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
DOCKET NO. 3:10-cv-00019-W**

AVANTI HEARTH PRODUCTS, LLC,

Plaintiff,

vs.

JANIFAST, INC., et. al.,

Defendants.

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ORDER

THIS MATTER is before the Court *sua sponte* upon the filing of the “Notice of Withdrawal of Appearance of Counsel” (Doc. No. 31), filed by Mathew E. Flatow, who is counsel of record for Defendant Mphase Technologies. The Court hereby STRIKES the document (Doc. No. 13) for failure to comply with the local rules.


Pursuant to Local Rule of Civil Procedure 83.1(F), in order for counsel to withdraw as counsel, the attorney “shall electronically file written consent of their client to their withdrawal which shall become effective, however, only upon Court approval. Absent consent of the client, withdrawal may be obtained by electronically filing a motion to withdraw showing good cause for the withdrawal. This motion is to include the last known address of the client.” Pursuant to Local Rules Civil Procedure 83.1(G), “substitution of counsel is accomplished automatically when the *new* attorney files a ‘Notice of Substitution of Counsel,’ which automatically terminates previous counsel and substitutes the new attorney as counsel of record.” (Emphasis added). Neither of these two rules have been followed here.

Moreover, the “Notice” purports to substitute co-defendant Janifast’s attorney of record as counsel for Mphase Technologies, Inc. In addition to the rule violations noted above, the Court is

also concerned with the potential for an attorney-client conflict that appears in the Notice. Therefore, any subsequent filing requesting permission to withdraw or noting substitution of counsel shall include a waiver of conflict signed by the parties.

IT IS SO ORDERED.

Signed: September 1, 2010



Frank D. Whitney
United States District Judge

